



Fact Sheet

Corporate Credit Union System

Capital Escrow Accounts

This guidance is intended for undercapitalized corporate credit unions ("CCUs") and consumer credit unions that may be considering contributing capital to such CCUs. "Undercapitalized" refers to CCUs that currently do not meet the necessary capital levels to be considered "adequately capitalized" pursuant to Section 704.4 of the National Credit Union Administration's ("NCUA") Rules and Regulations that become effective on October 20, 2011. An escrow account is one option available to undercapitalized CCUs as a means of attracting new capital contributions from their members in order to become adequately capitalized by the regulation's effective date.

Some CCUs have enough existing capital to meet the regulatory requirements to be considered adequately capitalized. Some of these CCUs may seek additional capital to further enhance their capital position. However, many CCUs will be required to seek contributed capital from their members in order to meet the regulatory requirements to be adequately capitalized. Any combination of retained earnings, non-perpetual capital accounts ("NCAs") which have a minimum five-year maturity, perpetual contributed capital ("PCC") which is a non-maturing capital contribution, existing paid-in capital ("PIC"), and non-amortized portion of existing membership capital accounts ("MCAs") can be utilized for calculating the required regulatory capital level as of October 20, 2011.

Committing capital contributions to a CCU is a significant undertaking for consumer credit unions. As undercapitalized CCUs begin the process to raise capital contributions from their members, there is no guarantee that each of these CCUs will be successful in reaching the capital levels necessary to be considered adequately capitalized. If an undercapitalized CCU is unsuccessful in raising sufficient capital to reach the minimum capital requirements to be considered adequately capitalized as set

forth in Part 704 by October 20, 2011, NCUA expects officials to implement contingent plans to ensure long-term viable service to their members. In those cases where an undercapitalized CCU is unable to meet its announced capital goals, it will be critical for those consumer credit unions that commit new capital to that CCU to have ready access to those new capital contributions in order to make their own future plans regarding services.

While not required under the regulation, NCUA strongly urges undercapitalized CCUs and consumer credit unions to consider the use of escrow accounts as part of the capital accumulation process. An escrow account will allow consumer credit unions to commit to the recapitalization of a CCU, but the funds would not actually be transferred from the escrow to the CCU unless the CCU fully met its capital solicitation goals to meet the adequately capitalized requirements. CCUs may facilitate participation from members, and consumer credit unions may be more willing to make capital commitments, if the capital can be returned to the consumer credit union should the CCU not meet the minimum capital raise goals.

Generally, the escrow concept would work as follows:

- The CCU announces the capital solicitation. The disclosure documents will include the terms and conditions of the solicitation and the escrow arrangement, the terms and conditions of the capital instruments, any minimum individual capital commitment and any adverse consequences associated with failure to make such a commitment, contributions, and the minimum aggregate capital goal.
- The consumer credit union would decide if it wants to make the necessary capital contribution in order to recapitalize the CCU, pursuant to the capital solicitation disclosures. If the CCU meets the minimum overall capital goal and any other escrow conditions, the consumer credit union's individual capital contribution is a legally binding contribution to the CCU.
- If the CCU does not meet all the escrow conditions, including the minimum overall capital goal to become adequately capitalized, the consumer credit union's individual capital contribution is not legally binding and will be returned to the consumer credit union pursuant to the steps set forth in the capital raise disclosure documents.

The specific legal requirements for escrow accounts will differ from state to state. CCUs should consult with local counsel on how to properly establish the rights, obligations, and ownership of the escrowed capital contributions.

CCUs will be meeting with their members over the coming weeks to finalize their capital compliance plans, which are due to NCUA by March 31, 2011. Undercapitalized CCUs are strongly encouraged to develop capital escrow accounts to provide their members with enough flexibility to seek other service providers should the CCU be unable to raise sufficient capital to meet the minimum capital requirements as set forth in the revisions to Part 704 to be considered adequate capitalized.